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Paper No. 7

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SEP 16 2002

In re Application of
Petroff, Yanagawa, and Muto
Application No. 10/056,860
Filed: January 23, 2002
Attorney Docket No. 1035/203
For: FLAT PANEL SPEAKER

OFFICE OF PETITIONS
: DECISION REFUSING
: STATUS UNDER
: 37 CFR 1.47(a)
: :
: :

This is a decision on the petition under 37 CFR 1.47(a), filed July 23, 2002.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

A grantable petition under 37 CFR 1.47(a) requires

- (1) proof that the non-signing inventor cannot be found or reached after diligent effort or that the inventor refuses to sign after having been presented with the application papers (specification, claims, and drawings),
- (2) a proper oath or Declaration executed by the available joint inventor(s),
- (3) the fee of \$130 as specified in 37 CFR § 1.17(h), and
- (4) the last known address of the omitted inventor(s).

In addition to the above requirements, the signing inventors must sign the declaration on behalf of the non-signing inventor. See MPEP 409.03(a).

As to item (1), petitioner must establish that the non-signing inventors refused to sign the oath or declaration after being presented with the application papers. Petitioner has failed to establish that the non-signing inventors were presented with a copy of the application. An inventor cannot sign a declaration stating he or she has "reviewed and understands the application papers" when the inventor has not been presented with a copy of the application and therefore has not reviewed the application. Refusal within the meaning of 37 CFR 1.47 requires that the inventor be presented¹ with the application papers and given adequate time to review the contents of the application. Until the inventor reviews the papers and reads the specification and claims, he cannot know if he is actually an inventor of the claimed invention. Petitioner should send a copy of the application to the inventors along with instructions setting a deadline or a statement that no response will constitute a refusal. This sort of ultimatum lends support to a finding of refusal by conduct. The proof of the pertinent events should be made by a statement of someone with firsthand knowledge of the events and should include documentary evidence, such as a certified mail return receipt, cover letter of instructions, telegram, etc.

¹ It is not sufficient for an applicant to simply make the papers available. See MPEP, Section 409.03(d).

The petition states that the inventors "indicated that they would refuse to cooperate." Petitioner should fully discuss such "refusal." Petitioner should note that when there is an express oral refusal, that fact, along with the time and place of the refusal, must be stated in an affidavit or declaration by the party to whom the refusal was made. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration. If the non-signing inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

In order to expedite consideration, petitioner may wish to submit the renewed petition under 37 CFR 1.47 by facsimile transmission to the telephone number indicated below and to the attention of the undersigned.

Further correspondence with respect to this matter should be addressed as follows:

By mail: **Commissioner for Patents
Box DAC
Washington, D.C. 20231**

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
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Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.

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